

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

STACY A. NABER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C. A. 09-946-MPT
	:	
DOVER HEALTHCARE ASSOCIATES,	:	
INC.,	:	
	:	
Defendant.	:	

MEMORANDUM ORDER

At Wilmington, this **10th** day of **June, 2011**.

Defendant submitted a motion to review the Clerk's denial of taxation of costs issued on May 12, 2011, specifically the determination that denied reimbursement of costs of the deposition of plaintiff Stacy Naber on the ground that there was no proof that a substantial portion of that deposition was used in the resolution of a material issue in the case.¹ Defendant is not requesting review of the other reasons for the Clerk's denial of the taxation of certain costs.² Defendant's motion was filed on May 21, 2011. No response has been filed by plaintiff.

Plaintiff filed a Notice of Appeal on March 24, 2011.³ Defendant's original bill of costs was filed on April 6, 2011.⁴ Under L.R. 54.1(a)(1), a bill of costs may be filed

¹ See D.I. 53.

² In its order, the Clerk also denied defendant's request for exemplification and duplication costs in the amount of \$135.46, relying on L.R. 54.1(a)(2) and (b)(5). The order further denied the motion for taxation of costs as premature since prior to the filing of the motion, plaintiff filed a Notice of Appeal. See L.R.54.1(a)(1).

³ D.I. 48.

⁴ D.I. 50.

within fourteen days after the time for appeal expired or within 14 days after the issuance of the mandate of the appellate court. No mandate from the appellate court has been issued. Therefore, the court finds that defendant's request for review and reversal of the Clerk's determination denying reimbursement of costs of the deposition of plaintiff is premature. As result,

IT IS ORDERED that defendant's motion for review of the Clerk's taxation of costs (D.I. 53) is denied as premature, with leave to refile after the issuance of the Third Circuit mandate, depending on the outcome of the appeal.

Wilmington, Delaware

/s/ Mary Pat Thyng
UNITED STATES MAGISTRATE JUDGE